

HOUSE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 642

AN ACT

To repeal sections 191.656, 191.659, and
191.677, RSMo, and to enact in lieu thereof
six new sections relating to sexually
transmitted diseases, with penalty
provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Sections 191.656, 191.659, and 191.677, RSMo,
are repealed and six new sections enacted in lieu thereof, to be
known as sections 191.224, 191.656, 191.659, 191.660, 191.677,
and 566.135, to read as follows:

191.224. The department of health and senior services shall
pay for the cost of conducting Hepatitis B testing, Hepatitis C
testing, HIV testing and testing for any other sexually
transmitted diseases for a victim of the crime of forcible rape
as defined in section 556.030, RSMo, statutory rape in the first
degree as defined in section 566.032, RSMo, statutory rape in the
second degree as defined in section 566.034, RSMo, forcible
sodomy as defined in section 566.060, RSMo, statutory sodomy in
the first degree as defined in section 566.062, RSMo, statutory

1 sodomy in the second degree as defined in section 566.064, RSMo,
2 child molestation in the first degree as defined in section
3 566.067, RSMo, child molestation in the second degree as defined
4 in section 566.068, RSMo, sexual assault as defined in section
5 566.040, RSMo, deviate sexual assault as defined in section
6 566.070, RSMo, sexual abuse as defined in section 566.100, RSMo,
7 or of the crime of incest as defined in section 568.020, RSMo, if
8 a person who is convicted of or pleads guilty to such crime is
9 determined to be infected with Hepatitis B, Hepatitis C, HIV or
10 any other sexually transmitted diseases based upon Hepatitis B
11 testing, Hepatitis C testing, HIV testing or testing for any
12 other sexually transmitted diseases conducted upon delivery of
13 the person to the department of corrections pursuant to section
14 191.659 or conducted pursuant to a court order subsequent to a
15 finding of guilt, plea of guilty or plea of nolo contendere
16 pursuant to section 191.663. Such testing shall be limited to
17 not more than two enzyme-linked immunosorbent assay (ELISA) tests
18 per year and such cost of such tests shall not be paid by the
19 department of health and senior services for more than five years
20 after the date the crime was committed. Hepatitis B testing,
21 Hepatitis C testing, HIV testing or testing for any other
22 sexually transmitted diseases conducted pursuant to this section
23 shall be performed by the public health laboratory of the
24 department of health and senior services.

1 191.656. 1. (1) All information known to, and records
2 containing any information held or maintained by, any person, or
3 by any agency, department, or political subdivision of the state
4 concerning an individual's HIV infection status or the results of
5 any individual's HIV testing shall be strictly confidential and
6 shall not be disclosed except to:

7 (a) Public employees within the agency, department, or
8 political subdivision who need to know to perform their public
9 duties;

10 (b) Public employees of other agencies, departments, or
11 political subdivisions who need to know to perform their public
12 duties;

13 (c) Peace officers, as defined in section 590.100, RSMo,
14 the attorney general or any assistant attorneys general acting on
15 his or her behalf, as defined in chapter 27, RSMo, and
16 prosecuting attorneys or circuit attorneys as defined in chapter
17 56, RSMo, and pursuant to section 191.657;

18 (d) Prosecuting attorneys or circuit attorneys as defined
19 in chapter 56, RSMo, to prosecute cases pursuant to section
20 191.677 or 567.020, RSMo. Prosecuting attorneys or circuit
21 attorneys may also obtain from the department of health the
22 contact information and test results of individuals with whom the
23 HIV-infected individual has had sexual intercourse or deviate
24 sexual intercourse. Any prosecuting attorney or circuit attorney

1 who receives information from the department of health and senior
2 services pursuant to the provisions of this section shall use
3 such information only for investigative and prosecutorial
4 purposes and such information shall be considered strictly
5 confidential and shall only be released as authorized by this
6 section;

7 [(d) Persons other than public employees who are entrusted
8 (d)] (e) Persons [other than public employees] who are
9 entrusted with the regular care of those under the care and
10 custody of a state agency, including but not limited to operators
11 of day care facilities, group homes, residential care facilities
12 and adoptive or foster parents;

13 [(e)] (f) As authorized by subsection 2 of this section;
14 (g) Victims of any sexual offense defined in chapter 566,
15 RSMo, which includes sexual intercourse or deviate sexual
16 intercourse, as an element of the crime or to a victim of a
17 section 566.135 or 567.020, RSMo, offense, in which the court,
18 for good cause shown, orders the defendant to be tested for HIV,
19 hepatitis B, hepatitis C, syphilis, gonorrhea, or chlamydia, once
20 the charge is filed. Prosecuting attorneys or circuit attorneys,
21 or the department of health and senior services may release the
22 defendant's test results to these victims. If the victim is an
23 unemancipated minor, the prosecuting attorney, circuit attorney
24 or the department of health and senior services may also inform

1 the minor's parents or custodian, if any;

2 (h) Spouses of individuals infected with HIV;

3 (i) Any individual who has tested positive or false
4 positive to HIV, Hepatitis B, Hepatitis C, Syphilis, Gonorrhea,
5 or Chlamydia, may request copies of any and all test results
6 relating to said infections.

7 (2) Further disclosure by public employees shall be
8 governed by subsections 2 and 3 of this section;

9 (3) Disclosure by a public employee or any other person in
10 violation of this section may be subject to civil actions brought
11 under subsection 6 of this section, unless otherwise required by
12 chapter 330, 332, 334, or 335, RSMo, pursuant to discipline taken
13 by a state licensing board.

14 2. (1) Unless the person acted in bad faith or with
15 conscious disregard, no person shall be liable for violating any
16 duty or right of confidentiality established by law for
17 disclosing the results of an individual's HIV testing:

18 (a) To the department of health and senior services;

19 (b) To health care personnel working directly with the
20 infected individual who have a reasonable need to know the
21 results for the purpose of providing direct patient health care;

22 (c) Pursuant to the written authorization of the subject of
23 the test result or results;

24 (d) To the spouse of the subject of the test result or

1 results;

2 (e) To the subject of the test result or results;

3 (f) To the parent or legal guardian or custodian of the
4 subject of the testing, if he is an unemancipated minor;

5 (g) To the victim of any sexual offense defined in chapter
6 566, RSMo, which includes sexual intercourse or deviate sexual
7 intercourse, as an element of the crime or to a victim of a
8 section 566.135 or section 567.020, RSMo, offense, in which the
9 court, for good cause shown, orders the defendant to be tested
10 for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, or
11 chlamydia, once the charge is filed. If the victim is an
12 unemancipated minor, no person shall be held liable for
13 disclosing this information to the minor's parents or custodian,
14 if any;

15 (h) To employees of a state licensing board in the
16 execution of their duties under chapter 330, 332, 334, or 335,
17 RSMo, pursuant to discipline taken by a state licensing board;
18 The department of health and senior services and its employees
19 shall not be held liable for disclosing during an epidemiological
20 investigation an HIV infected person's HIV status to individuals
21 with whom that person had sexual intercourse or deviate sexual
22 intercourse;

23 (2) Paragraphs (b) and (d) of subdivision (1) of this
24 subsection shall not be construed in any court to impose any duty

1 on a person to disclose the results of an individual's HIV
2 testing to a spouse or health care professional or other
3 potentially exposed person, parent or guardian;

4 (3) No person to whom the results of an individual's HIV
5 testing has been disclosed pursuant to paragraphs (b) and (c) of
6 subdivision (1) of this subsection shall further disclose such
7 results; except that prosecuting attorneys or circuit attorneys
8 may disclose such information to defense attorneys defending
9 actions pursuant to section 191.677 or 567.020, RSMo, under the
10 rules of discovery, or jurors or court personnel hearing cases
11 pursuant to section 191.677 or 567.020, RSMo. Such information
12 shall not be used or disclosed for any other purpose;

13 (4) When the results of HIV testing, disclosed pursuant to
14 paragraph (b) of subdivision (1) of this subsection, are included
15 in the medical record of the patient who is subject to the test,
16 the inclusion is not a disclosure for purposes of such paragraph
17 so long as such medical record is afforded the same
18 confidentiality protection afforded other medical records.

19 3. All communications between the subject of HIV testing
20 and a physician, hospital, or other person authorized by the
21 department of health and senior services who performs or conducts
22 HIV sampling shall be privileged communications.

23 4. The identity of any individual participating in a
24 research project approved by an institutional review board shall

1 not be reported to the department of health and senior services
2 by the physician conducting the research project.

3 5. The subject of HIV testing who is found to have HIV
4 infection and is aware of his or her HIV status shall disclose
5 such information to any health care professional from whom such
6 person receives health care services. Said notification shall be
7 made prior to receiving services from such health care
8 professional if the HIV infected person is medically capable of
9 conveying that information or as soon as he or she becomes
10 capable of conveying that information.

11 6. Any individual aggrieved by a violation of this section
12 or regulations promulgated by the department of health and senior
13 services may bring a civil action for damages. If it is found in
14 a civil action that:

15 (1) A person has negligently violated this section, the
16 person is liable, for each violation, for:

17 (a) The greater of actual damages or liquidated damages of
18 one thousand dollars; and

19 (b) Court costs and reasonable attorney's fees incurred by
20 the person bringing the action; and

21 (c) Such other relief, including injunctive relief, as the
22 court may deem appropriate; or

23 (2) A person has willfully or intentionally or recklessly
24 violated this section, the person is liable, for each violation,

1 for:

2 (a) The greater of actual damages or liquidated damages of
3 five thousand dollars; and

4 (b) Exemplary damages; and

5 (c) Court costs and reasonable attorney's fees incurred by
6 the person bringing the action; and

7 (d) Such other relief, including injunctive relief, as the
8 court may deem appropriate.

9 7. No civil liability shall accrue to any health care
10 provider as a result of making a good faith report to the
11 department of health and senior services about a person
12 reasonably believed to be infected with HIV, or cooperating in
13 good faith with the department in an investigation determining
14 whether a court order directing an individual to undergo HIV
15 testing will be sought, or in participating in good faith in any
16 judicial proceeding resulting from such a report or
17 investigations; and any person making such a report, or
18 cooperating with such an investigation or participating in such a
19 judicial proceeding, shall be immune from civil liability as a
20 result of such actions so long as taken in good faith.

21 191.659. 1. Except as provided in subsection 2 of this
22 section, all individuals who are delivered to the department of
23 corrections and all individuals who are released or discharged
24 from any correctional facility operated by the department of

1 corrections, before such individuals are released or discharged,
2 shall undergo HIV testing without the right of refusal. In
3 addition, the department of corrections may perform or conduct
4 HIV testing on all individuals required to undergo annual or
5 biannual physical examinations by the department of corrections
6 at the time of such examinations.

7 2. The department of corrections shall not perform HIV
8 testing on an individual delivered to the department if similar
9 HIV testing has been performed on the individual subsequent to
10 trial and if the department is able to obtain the results of the
11 prior HIV test.

12 3. The department shall inform the victim of any sexual
13 offense defined in chapter 566, RSMo, which includes sexual
14 intercourse or deviate sexual intercourse as an element of the
15 crime, of any confirmed positive results of HIV testing on an
16 offender within the custody of the department. If the victim is
17 an unemancipated minor, the department shall also inform the
18 minor's parents or custodian, if any.

19 191.660. 1. Except as provided in subsection 2 of this
20 section, sex offenders who are delivered to the department of
21 corrections shall undergo Hepatitis B testing, Hepatitis C
22 testing, HIV testing or testing for any other sexually
23 transmitted diseases without the right of refusal. In addition,
24 the department of corrections may perform or conduct Hepatitis B

1 testing, Hepatitis C testing, HIV testing or testing for any
2 other sexually transmitted diseases on all individuals required
3 to undergo annual or biannual physical examinations by the
4 department of corrections at the time of such examinations.

5 2. The department of corrections shall not perform
6 Hepatitis B testing, Hepatitis C testing, HIV testing or testing
7 for any other sexually transmitted diseases on an individual at
8 the time he or she is delivered to the department if similar
9 Hepatitis B testing, Hepatitis C testing, HIV testing or testing
10 for any other sexually transmitted diseases has been performed on
11 the individual subsequent to trial and if the department is able
12 to obtain the results of the prior Hepatitis B test, Hepatitis C
13 test, HIV test or test for any other sexually transmitted
14 diseases.

15 3. The department shall inform the victim of any sexual
16 offense defined in chapter 566, RSMo, which includes sexual
17 intercourse, deviate sexual intercourse or sexual contact as an
18 element of the crime, of any confirmed positive results of
19 Hepatitis B testing, Hepatitis C testing, HIV testing or testing
20 for any other sexually transmitted diseases on an offender within
21 the custody of the department. If the victim is an unemancipated
22 minor, the department shall also inform the minor's parents or
23 custodian, if any.

24 191.677. 1. It shall be unlawful for any individual

1 knowingly infected with HIV to:

2 (1) Be or attempt to be a blood, blood products, organ,
3 sperm or tissue donor except as deemed necessary for medical
4 research; or

5 (2) Act in a reckless manner by exposing another person to
6 HIV without the knowledge and consent of that person to be
7 exposed to HIV, in one of the following manners:

8 (a) Through contact with blood, semen or vaginal [fluid]
9 secretions in the course of oral, anal or vaginal sexual
10 intercourse[,]i or

11 (b) By the sharing of needles; or

12 (c) By biting another person or acting in any other manner
13 which causes the HIV infected person's semen, vaginal secretions,
14 or blood to come into contact with the mucous membranes or
15 nonintact skin of another person.

16 Evidence that a person has acted recklessly in creating a risk of
17 infecting another individual with HIV shall include, but is not
18 limited to, the following:

19 [(a)] a. The HIV infected person knew of such infection
20 before engaging in sexual activity with another person, sharing
21 needles with another person, biting another person, or causing
22 his or her semen, vaginal secretions, or blood to come into
23 contact with the mucous membranes or nonintact skin of another

1 person, and such other person is unaware of the HIV infected
2 person's condition or does not consent to contact with blood,
3 semen or vaginal fluid in the course of [sexual activity, or by
4 the sharing of needles] such activities;

5 [(b)] b. The HIV infected person has subsequently been
6 infected with and tested positive to primary and secondary
7 syphilis, or gonorrhea, or chlamydia; or

8 [(c)] c. Another person provides [corroborated] evidence of
9 sexual contact with the HIV infected person after a diagnosis of
10 an HIV status.

11 2. Violation of the provisions of subdivision (1) or (2) of
12 subsection 1 of this section is a class [D] B felony unless the
13 victim contracts HIV from the contact in which case it is a class
14 A felony.

15 3. [Violation of the provisions of subsection 1 of this
16 section with a person under the age of seventeen is a class C
17 felony if the actor is over the age of twenty-one.

18 4.] The department of health and senior services or local
19 law enforcement agency, victim or others may file a complaint
20 with the prosecuting attorney or circuit attorney of a court of
21 competent jurisdiction alleging that [an individual] a person has
22 violated a provision of subsection 1 of this section. The
23 department of health and senior services shall assist the
24 prosecutor or circuit attorney in preparing such case[.], and

1 upon request, turn over to peace officers, police officers, the
2 prosecuting attorney or circuit attorney, or the attorney general
3 records concerning that person's HIV-infected status, testing
4 information, counseling received, and the identity and available
5 contact information for individuals with whom that person had
6 sexual intercourse or deviate sexual intercourse and those
7 individuals' test results.

8 4. The use of condoms is not a defense to a violation of
9 paragraph (a) of subdivision (2) of subsection 1 of this section.

10 566.135. 1. Pursuant to a motion filed by the prosecuting
11 attorney or circuit attorney with notice given to the defense
12 attorney and for good cause shown, including evidence of a
13 medically significant exposure as defined in section 191.658,
14 RSMo, in any criminal case in which a defendant has been charged
15 by the prosecuting attorney's office or circuit attorney's office
16 with any offense under this chapter or pursuant to section
17 575.150, 567.020, 565.050, 565.060, 565.070, 565.072, 565.073,
18 565.074, 565.075, 565.081, 565.082, 565.083, 568.045, 568.050, or
19 568.060, RSMo, or paragraph (a), (b), or (c), of subdivision (2)
20 of subsection 1 of section 191.677, RSMo, the court may order
21 that the defendant be conveyed to a state, city, or county
22 operated HIV clinic for testing for HIV, hepatitis B, hepatitis
23 C, syphilis, gonorrhea, and chlamydia. The results of the
24 defendant's HIV, hepatitis B, hepatitis C, syphilis, gonorrhea,

1 and chlamydia tests shall be released to the victim and his or
2 her parent or legal guardian if the victim is a minor. The
3 results of the defendant's HIV, hepatitis B, hepatitis C,
4 syphilis, gonorrhea, and chlamydia tests shall also be released
5 to the prosecuting attorney or circuit attorney and the
6 defendant's attorney. The state's motion to obtain said testing,
7 the court's order of the same, and the test results shall be
8 sealed in the court file. If the suspect has tested positive for
9 HIV or another sexually transmitted disease the state may use
10 said evidence at trial and then reseal the test results in the
11 court file.

12 2. As used in this section "HIV", means the human
13 immunodeficiency virus that causes acquired immunodeficiency
14 syndrome.